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No. 77-638

In the Supreme Court of the United States

OCTOBER TERM, 1977

TIMOTHY GRANADEROS, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner claims that the immigration judge abused his discretion in finding him to be deportable and refusing to grant him a stay of deportation.

1. Petitioner, who is a native and citizen of the Philippines, suffered severe burns over much of his body while working as a crewman on the freighter M/T Stolt Falcon on Lake Michigan in November 1972. He was admitted into the United States, with a landing permit authorizing him to remain no longer than twenty-nine days (Rec. 44),[1] so that he could be treated at the University of Michigan Burn Center. After undergoing a series of reconstructive operations, petitioner was released from the Burn Center in December 1974 (Rec. 44).

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[1] "Rec." refers to the certified administrative record of the Immigration and Naturalization Service on file with the Clerk of this Court.

One year later, in December 1975, the Immigration and Naturalization Service notified petitioner that he was subject to deportation proceedings under Section 241(a)(2) of the Immigration and Nationality Act, 66 Stat. 163, 204, 8 U.S.C. 1251(a)(2), because he had remained in the United States for longer than the twenty-nine days authorized (Rec. 35).[2] On December 17, 1975, an administrative hearing was conducted by an immigration judge; petitioner was present and represented by counsel (Rec. 27). Petitioner conceded that he had entered the United States with a D-1 landing permit that authorized him to remain for a period not exceeding twenty-nine days, and that he had remained in the United States for a period exceeding twenty-nine days (Rec. 31). On the basis of these admitted facts, the immigration judge held that petitioner was deportable (Rec. 24, 32).[3] The Board of Immigration Appeals dismissed petitioner's appeal (Pet. App. B, p. 13), observing that petitioner's request to stay in the United States for further medical treatment should be addressed to the District Director (Pet. App. B, p. 14).

The Court of Appeals for the Sixth Circuit dismissed petitioner's appeal from the order of deportation; the court noted, however, that nothing in its order should be construed as precluding an application by petitioner to the District Director for a stay of deportation to permit further medical treatment in the United States (Pet. App. A, pp. 11-12).

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[2]The District Director deferred any action the Service legally could have taken against petitioner during the entire period of his hospitalization.

[3]In lieu of an order of deportation, petitioner was given until January 17, 1976, to leave the country; the immigration judge informed petitioner that any extension of time would have to be granted by the District Director (Rec. 24, 30-31).

2. Petitioner concedes that he is an alien crewman who was admitted into the United States pursuant to 8 U.S.C. 1282(a) for a period not to exceed twenty-nine days (Rec. 28-29, 31-32; Pet. 3-4). Since petitioner does not dispute the fact that he has remained in the United States for a period far in excess of 29 days, he is by his own admission subject to deportation pursuant to 8 U.S.C. 1251(a)(2). See *Milande* v. *Immigration and Naturalization Service*, 484 F. 2d 774 (C.A. 7); *Shu Fuk Cheung* v. *Immigration and Naturalization Service*, 476 F. 2d 1180 (C.A. 8); *Klissas* v. *Immigration and Naturalization Service*, 361 F. 2d 529 (C.A.D.C.).

Petitioner's desire to remain in the United States so that he may receive the best possible medical treatment is, as he has been advised throughout these proceedings, a request that should be addressed not to the courts, but to the District Director of the Immigration and Naturalization Service, who has discretion to grant a stay of deportation pursuant to 8 C.F.R. 243.4 See *Kladis* v. *Immigration and Naturalization Service*, 343 F. 2d 513 (C.A. 7).

Although petitioner also contends (Pet. 5) that the immigration judge erred in finding him deportable because deportation would hinder his efforts to secure full compensation under the Jones Act, 41 Stat. 1007, 46 U.S.C. 688, this argument is answered by petitioner's admission (Pet. 8) that his Jones Act claim has now been settled.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DANIEL M. FRIEDMAN,
*Acting Solicitor General**

JANUARY 1978

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*The Solicitor General is disqualified in this case.

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